TAX Insights

BDB Law
DU-BALADAD AND ASSOCIATES

Insights

APRIL ● VOL. 04 ● SERIES OF 2021

What's Inside…

INSIGHTS is a monthly publication of BDB LAW to inform, update and provide perspectives to our clients and readers on significant tax-related court decisions and regulatory issuances (*includes BIR, SEC, BSP and various government agencies*).

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HIGHLIGHTS for March 2021

HIGHLIGHTS

COURT DECISIONS

- Under Sec. 173 of the NIRC, whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax. *(San Carlos Biopower, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9919, March 01, 2021)*
- The BIR's failure to comply with the procedure for properly effecting substituted service of FLD/FAN renders the service invalid. *(Echotechnovations, Inc. vs. Commissioner of Internal Revenue CTA Case No. 9701 dated March 3, 2021)*
- Between R.A. No. 9136 (EPIRA) and the NIRC of 1997, the former governs a claim of VAT zero-rating on sales of renewable sources of energy. *(First Gen Hydro Power Corporation v. Commissioner of Internal Revenue, CTA Case No. 9889, March 05, 2021)*
- RA 9513 does not require the DOE's endorsement in order that an RE developer to enjoy a zero-rated VAT rate.(*Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9663, March 08, 2021)*
- The word "TIN-V" does not comply with the requirement under R.R. No. 07-95 that a VAT registered presto to print "TIN-VAT" on its invoices and official receipts. *(Kepco Ilijan Corporation v. Commissioner of Internal Revenue, CTA Case No. 6966, March 12, 2021)*

BIR ISSUANCES

- **RMC No. 36-2021, March 5, 2021** – Prescribes changes and guidelines on the shift from final to a creditable system on the value-added tax (VAT) withheld on sales to government or any of its political subdivisions, instrumentalities or agencies, including Government-Owned or-Controlled Corporations (GOCCs).
- **RMC No. 39-2021, March 22, 2021** – Extension of the deadline for the filing of Applications for VAT Refund Claims and Suspension of the 90-Day Processing at the VAT Credit Audit Division.
- **RMC No. 41-2021, March 29, 2021** – Filing of Returns as well as Payment of Taxes Due thereon Falling within the Period March 22, 2021 to April 30, 2021.
- **RMC No. 42-2021, March 31, 2021** – Circularizing Republic Act No. 11534, or the CREATE Act.
- **RMO No. 14-2021, March 31, 2021** – This prescribed the streamlining of the Procedures and Documents for the Availment of Tax Treaty Benefits

HIGHLIGHTS

SEC ISSUANCES

- **SEC Notice dated March 25, 2021** – This provides for the extension of deadline for submission of all mandatory disclosures under Sections 6 and 7 of SEC MC No. 01, Series of 2021.
- **SEC Notice dated March 30, 2021** – This clarifies the non-extension of grace period for the payment of loans and/or interest falling due within the Enhanced Community Quarantine (ECQ) period.
- **SEC Notice dated March 31, 2021** – This provides for the extension of deadline for the submission of the General Information Sheet (GIS) for 2021.
- **SEC MC No. 03 s. 2021** – This provides for the guidelines on the filing Annual Financial Statements (AFS), General Information Sheet (GIS) and Other Covered Reports.
- **SEC MC No. 04 s. 2021** – This amends the Memorandum Circular (MC) No. 16, s. of 2018 or the Guidelines on Anti-Money Laundering and Combating the Financing of Terrorism for SEC Covered Institutions ("2018 AML/CFT Guidelines") and MC no. 29, s. of 2020 or the 2020 Guidelines on the Submission and Monitoring of the Money Laundering and Terrorist Prevention Program (MTPP).

BSP ISSUANCES

- **BSP Circular No. 1111, March 03, 2021** – This amends the Rules and Regulations on the Mandatory Credit Allocation for Agriculture and Agrarian Reform Credit.
- **BSP CL-2020-021, March 9, 2021** – This circularize the celebration of trust consciousness week.
- **BSP CL-2021-023, March 18, 2021** – This disseminates the 2021 Sanctions Guidelines issued by the Anti-Money Laundering Council (AMLC).
- **BSP M-2021-016, March 16, 2021** – This provides guidelines on the electronic submission of Information Technology (IT) Profile Report.
- **BSP M-2021-017, March 16, 2021** – This provides the 3rd sectoral risk assessment for banks and other BSP-supervised financial institutions.

IC ISSUANCES

- **IC Circular Letter-2021-013, March 3, 2021** – This prescribes additional quarterly reports for Pre-Need Companies.
- **IC Circular Letter-2021-018, March 16, 2021** – This provides the protocol for Pre-Need Companies in financial distress which are at the same time undergoing rehabilitation or other proceedings under Republic Act No. 10112, Otherwise Known as the "Financial Rehabilitation and Insolvency Act (FRIA) of 2010."
- **IC Circular Letter-2021-022, March 29, 2021** – This provides guidelines on the operations of Health Maintenance Organizations and Health Insurance Providers under the Enhanced Community Quarantine (ECQ).
- **IC LO-2021-05, March 2, 2021** – A performance security/bond that states that it is valid "until issuance of the final acceptance of the project" or "co-terminus with the final acceptance" remains valid until such acceptance, even if such period extends beyond one (1) year, provided that the applicable premium is duly paid.

COURT OF TAX APPEALS

DECISION HIGHLIGHTS

Under Sec. 173 of the NIRC, whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.

The taxpayer insists that the agreement entered with International Finance Corporation ("IFC") is exempt from DST because of the immunity from taxation of the latter under Republic Act No. 1604.

The Court of Tax Appeals ruled that the liability for the DST rests on the parties to the taxable document. However, when one of the parties to the taxable transaction is exempt from the DST, the other party who is not exempt shall be the one directly liable therefor, in which case, the DST shall be paid and remitted by the said non-exempt party. Since it is established that IFC is immune from all taxation, the liability to pay the DST is now shifted to the taxpayer, being the party not exempt from the payment thereof. *(San Carlos Biopower, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9919, March 01, 2021)*

A motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended.

On January 14, 2020, the CIR filed a motion for extension of time to file petition for review. The CIR argued that BIR RR No. 08 Makati was already dissolve due to the reorganization in the BIR, and thus the running of the period to file petition for review should be counted from the receipt of BIR RR No. 08(A).

The CTA *En Banc* ruled that the CIR's period to file the Petition for Review expired on January 10, 2020. However, its Motion for Extension was belatedly filed on January 14, 2020. The Supreme Court stated that It is a basic rule of remedial law that a motion for extension of time to file a pleading must be filed before the expiration of the period sought to be extended. The court's discretion to grant a motion for extension is conditioned upon such motion's timeliness, the passing of which renders the court powerless to entertain or grant it. Since the motion for extension was filed after the lapse of the prescribed period, there was no more period to extend. Thus, the Petition for Review filed on January 22, 2020 was clearly filed out of time and must be dismissed. (*Commissioner of Internal Revenue v. Actuate Builders, Inc., CTA EB NO. 2211, March 2, 2021)*

In all cases, whatever documents a taxpayer intends to file to support his claim must be completed within the two-year period under Section 112(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

Taxpayer filed its administrative application for VAT refund on September 24, 2013, and already attached therewith the VAT returns for the 3rd and 4th quarters of taxable year 2011. Thereafter, taxpayer no longer submitted additional documents to support its claim within the 120-day period from the submission of its administrative claim.

The CTA *En Banc* ruled that considering that this case pertains to application for tax credit/refund input VAT for the 3rd and 4th quarters of 2011, which closed on September 30, 2011 and December 31, 2011, respectively, taxpayer had until September 30, 2013 and December 31, 2013, respectively, or two years after the close of the taxable quarters when sales were made, to submit all of pertinent supporting documents to the BIR. The Supreme Court reiterated that the 120-day period within which the CIR should act on the administrative claim shall be reckoned from September 24,2013, the date of filing of the administrative claim. Counting one hundred twenty (120) days from September 24, 2013, CIR had until January 22, 2014, within which to act on taxpayer's administrative claim. Taxpayer had thirty (30) days from January 22, 2014 or until February 21, 2014 to file its appeal of CIR's inaction on its administrative claim before the CTA. Consequently, taxpayer's judicial claim for refund or tax credit filed before this Court on September 19, 2014 was filed out of time. *(Thermaprime Drilling Corporation v. Commissioner of Internal Revenue, CTA EB No. 2155, March 2, 2021)*

Services made outside of the Philippines by an NRFC not engaged in trade or business shall not be subject to Final Withholding Tax and Income Tax.

In this case, Snowy Owl Energy, Inc. and Rolenergy, a NRFC not engaged in business within the Philippines, entered into a consultancy agreement wherein Rolenergy would serve as Snowy Owl Energy, Inc.'s subconsultant. The Agreement provides the rendition of services in Hong Kong, wherein Rolenergy would review engineering designs and send review reports to Snowy Owl Energy, Inc. The compensation for the services rendered will be paid through bank wire transfer. The BIR averred that the fees paid should be subject to Income Tax and Final Withholding Tax.

The Court of Tax Appeals held that Rolenergy is not liable for FWT. Rolenergy is a non-resident foreign corporation not engaged in business in the Philippines, and Snowy Owl Energy, Inc. ably proved that Rolenergy's services were performed in Hong Kong in accordance with their Agreement. Indubitably, the payments made in exchange for the services rendered in Hong Kong are income derived from sources outside of the Philippines, thus not subject to IT and consequently to FWT. CIR's assessment for deficiency FWT should then be cancelled. *(Snowy Owl Energy Inc. v. Commissioner of Internal Revenue, CTA Case No. 9618, March 3, 2021)*

The BIR's failure to comply with the procedure for properly effecting substituted service of FLD/FAN renders the service invalid.

BIR assessed Taxpayer because the latter bought a parcel of land, and such sale does not reflect in its Property, Plant and Equipment line item in its financial statements. As the assessment ensued, Taxpayer alleged that BIR failed to serve them Formal Assessment Notice with Formal Letter of Demand (FAN/FLD). BIR argued that it provided FAN/FLD to the Taxpayer through substituted service.

The Court of Tax Appeals ruled that the following procedures must be complied with to properly effect substituted service of FLD/FAN:

First, the substituted service may be availed of only when it is shown that personal service is not practicable; Second, the BIR must show that the subject FLD/FAN was served to taxpayer's "clerk" or a "person having charge" of taxpayer's office as required under Section 3.1.6 of RR No. 12-99, as amended; Third, the required details including the relevant facts surrounding the substituted service must be indicated in the FLD/FAN; and Fourth, the name, signature and official position of the barangay officers must be indicated. *(Echotechnovations, Inc. vs. Commissioner of Internal Revenue CTA Case No. 9701 dated March 3, 2021)*

If the property being taxed has not been dropped from the assessment roll, taxes must be paid under protest if the exemption from taxation is insisted upon.

The taxpayer alleges that as a government instrumentality, it is exempt from the payment of real property tax ("RPT")

The Court of Tax Appeals ruled that every person claiming RPT exemption must present documentary evidence in support of its claim for exemption, within thirty (30) days from the date of the declaration of real property, in order for the subject property not to be listed in the assessment roll. Should the taxpayer fail to do so, the same law affords the taxpayer an opportunity to still claim for exemption by providing proof in support thereof. *(National Food Authority v. Municipality of Sharif Aguak, Municipal Treasurer , and Municipal Assessor of Sharif Aguak, Maguindanao, CTA AC No. 202, March 04, 2021)*

Between R.A. No. 9136 (EPIRA) and the NIRC of 1997, the former governs a claim of VAT zero-rating on sales of renewable sources of energy.

The taxpayer avers that the R.A. No. 9136 or "Electric Power Industry Reform Act of 2001 (EPIRA)" and are inapplicable since the taxpayer manifested that its claim for VAT zero-rating on sales of generated power from renewable sources of energy is anchored primarily on Section 108(B)(7) of the NIRC of 1997.

The Court of Tax Appeals ruled that the taxpayer incurred the subject unutilized input taxes for on C.Y. 2016, and R.A. No. 9136 was already in effect. Thus, between a special law like R.A. No. 9136 and a general law like the NIRC of 1997; it is a rule in statutory construction that a special law prevails over the general law, regardless of the laws respective dates of passage. *(First Gen Hydro Power Corporation v. Commissioner of Internal Revenue, CTA Case No. 9889, March 05, 2021)*

RA 9513 does not require the DOE's endorsement in order that an RE developer to enjoy a zero-rated VAT rate.

The taxpayer file a claim for refund on excess input VAT attributable to its zero-rated sales on sale of power from renewable energy. However, the Court of Tax Appeals ruled that the sales of the taxpayer cannot be considered VAT zero-rated for lack of Certificate of Endorsement ("COE") from the Department of Energy ("DOE"). The taxpayer then filed a motion of reconsideration.

The Court of Tax Appeals issued a resolution reversing its earlier decision and stating that a COE from the DOE is only required of the taxpayer if it wishes to avail of the incentive on duty-free importation of renewable energy machinery, equipment and materials as shown in its Certificate of Registration issued by the Board of Investments. The same condition however is not imposed on its enjoyment of a zero-rated VAT rate. RA 9513 does not require the DOE's endorsement in order that an RE developer to enjoy a zero-rated VAT rate. Hence, the taxpayer would still be able to avail a zero percent VAT rate regardless of its procurement of the COE. *(Philippine Geothermal Production Company, Inc. v. Commissioner of Internal Revenue, CTA Case No. 9663, March 08, 2021)*

Section 196 of the Local Government Code governs Petitions for Refund through erroneous or illegally paid local taxes.

Taxpayer paid local business taxes before the City of Manila based on Sections 18 and 21 (A) of its local revenue code. In this regard, Taxpayer filed an action for refund of erroneously paid taxes due to double taxation. Initially, CTA dismissed the petition for refund, but the Supreme Court reversed the decision and mandated CTA to observe the ruling on City of Manila vs. Cosmos Bottling Corp.

The CTA *En Banc* ruled that Section 196 of the Local Government Code applies to cases where the taxpayer already paid local business taxes, and by virtue of erroneous or illegal payment, filed an action for refund. Accordingly, the taxpayer must have paid the tax, and the refund is filed within two (2) years from payment. Nothing in the provision states that there should be any assessment notices before the local government unit obtain jurisdiction.

Here, Taxpayer filed for a refund due to double taxation of its payment by virtue of Sections 18 and 21(A) of Revenue Code of Manila. Moreover, the same was filed within two (2) years. Hence, the Petition for Review is granted. *(International Container Terminal Services, Inc. vs. The City of Manila et. al. CTA EB No. 277 dated March 10, 2021)*

If the taxpayer denies having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.

The Taxpayer consistently denies the receipt of the FLD at the time the BIR supposedly mailed it to him. According to the taxpayer, it only received the copies of the assessment notices after it requested for said copies.

The CTA *En Banc* cancelled the assessment and cited the Supreme Court's decision in Barcelon that if the taxpayer denies having received an assessment from the BIR, it is incumbent upon the latter to prove by competent evidence that such notice was indeed received by the addressee.

While the CIR was able to present the registry return card relative to the alleged mailing of FLD to taxpayer, it failed to prove that the same has been signed by the authorized representative of the taxpayer. Since the CIR failed to sufficiently prove that the taxpayer received the formal letter of demand (FLD), the assessment is void as the taxpayer was not accorded due process. *(Commissioner of Internal Revenue vs. Xylem Water Systems International, Inc., CTA EB No. 2120 (CTA Case No. 8901), March 12, 2021*)

To qualify for VAT zero-rating in the sale of power generated through renewable sources of energy, such as wind, the taxpayer must secure a Certificate of Endorsement from the ERC.

Taxpayer, a renewable energy developer of wind energy resources, filed for Petition for Refund for its excess unutilized input VAT for 2014. Accordingly, BIR issued a Letter of Authority to examine the books of the Taxpayer. Upon denial, the case was elevated before the CTA.

The Court of Tax Appeals ruled that in order to qualify for VAT zero-rating in the sale of power generated through renewable sources of energy, such as wind, the seller must secure the following: (1) Certificate of Registration issued by the Department of Energy; (2) Certificate of Registration issued by the Board of Investments; (3) Certificate of Endorsement issued by the Department of Energy; and (4) Certificate of Compliance issued by the Energy Regulatory Commission, secured before actual commercial operations by the generation company.

Unfortunately, Taxpayer failed to present its Certificate of Endorsement from the ERC, and provided a Certificate of Compliance dated 2015, a year later than the period of refund. Hence, the claim is denied. *(EDC Burgos Wind Power Corporation vs. Commissioner of Internal Revenue CTA Case No. 9446 dated March 12, 2021)*

The word "TIN-V" does not comply with the requirement under R.R. No. 07-95.

The taxpayer filed before the CTA a claim for refund of its unutilized excess input VAT. However, the CTA denied the input VAT from official receipts or invoices reflecting "TIN-V" instead of "TIN-VAT"

The CTA ruled that RR No. 07-95 specifically requires a VAT -registered person to imprint "TIN-VAT" on its invoices or receipts. Consequently, purchases supported by invoices or official receipts, wherein the "TIN-VAT" is not printed thereon, shall not give rise to any input VAT. (*Kepco Ilijan Corporation v. Commissioner of Internal Revenue, CTA Case No. 6966, March 12, 2021)*

The taxpayer must prove that the capital equipment is not available domestically to be entitled to VAT and customs fees exemption.

The BIR issued RMC 17-2013 declaring that contractors are liable to pay taxes due under the NIRC. Subsequently, Taxpayer (FTAA Contractor) imported several capital equipment. Hence, the Taxpayer was assessed to pay VAT and customs fees by virtue of the said RMC. Aggrieved, Taxpayer filed a Petition for Refund before the CTA.

The Court of Tax Appeals ruled that the following must first be satisfied in order for a taxpayer to be entitled to the VAT and customs fees exemption on its importation of capital equipment, to wit: (1) the importation of the capital equipment should have taken place during or before the recovery period; (2) the capital equipment is not available domestically in comparable price and quality; (3) the capital equipment is actually needed and will be used exclusively by the FTAA contractor in its mining operations; (4) the importation of capital equipment should be covered by shipping documents in the name of the FTAA Contractor to whom the shipment will be delivered directly by the customs authorities; and (5) the capital equipment was not sold, transferred or disposed from the date of approval of the Declaration of Mining Project Feasibility until the end of Recovery Period and/or within a period of five (5) years from the date of acquisition of such capital equipment, subject to exceptions under the FTAA.

Here, the Taxpayer failed to prove that the capital equipment is not available domestically, and thus not entitled to the refund of VAT and customs fees. *(FCF Minerals Corporation vs. Commissioner of Customs CTA Case No. 8789 dated March 15, 2021)*

Before any civil collection of remedies can be employed, it must first be established that the taxes which are subject to the collection have become delinquent.

The CIR filed a motion for reconsideration on the cancellation of assessment issued against the taxpayer solely on the ground that the memorandum of assignment was signed by a division chief.

The Court of Tax Appeals *En Banc* denied the motion for reconsideration for being a carbon copy of those raised in the Petition for Review.

The Court of Tax Appeals *En Banc* then remind the CIR that the civil remedies for collection of taxes provided under Chapter II, Title VIII of the Tax Code should not be used at will but only when the taxes sought to be collected have already become delinquent. While Section 218 of the Tax Code expressly provides that "[n]o court shall have the authority to grant an injunction to restrain the collection of any national internal revenue tax, fee or charge imposed by this Code", the same should not be construed to mean that CIR has the blanket authority to use such collection remedies at any stage of the tax collection proceedings. *(Commissioner of Internal Revenue vs. Central Luzon Drug Corporation, CTA EB No. 2038 (CTA Case No. 8952), March 16, 2021 [Resolution])*

BIR ISSUANCES

HIGHLIGHTS

RMC No. 32-2021, March 2, 2021

This prescribes the standard guidelines and mandatory requirements for the processing and issuance of Tax Clearance Certificate for Government-Owned or Controlled Corporations relative to the application for Interim Performance-Based Bonus

All applications for the issuance of the TCC-GOCC, together with the mandatory requirements required under the Circular shall be electronically filed with tcc_gocc@bir.gov.ph using the subject Company Name_PBB Claim Period as the prescribed subject template (e.g. Juan Corporation_2020).

The following prescribed criteria for the issuance of TCC-GOCC shall be observed by the taxpayer-applicant:

a. No unpaid Annual Registration Fee;
b. No open valid "stop filer" cases;
c. No outstanding AR/DA that may not have yet been reported/transmitted to the Revenue Regional Office/Large Taxpayers Service; and
d. Not tagged as a Cannot Be Located (CBL) taxpayer.

All applications for TCC-GOCC shall be processed, issued and released within three (3) working days upon acknowledgement of application with complete attachment of documentary requirements. Verification on any existing tax liability/ies of the taxpayer-applicant shall be guided by the definition stipulated in Revenue Memorandum Order No. 11-2014, as amended, and validation with appropriate existing BIR systems. The TCC-GOCCs shall be signed/approved by the Assistant Commissioner or Head Revenue Executive Assistant, Collection Service.

RMC No. 33-2021, March 3, 2021

This announces the availability of the Offline Bureau of Internal Revenue Forms (eBIRForms) Package Version 7.8

eBIRForms Package Version 7.8 is downloadable from www.bir.gov.ph and www.knowyourtaxes.ph.

The new Offline eBIRForms Package now includes the January 2018 version of the following forms:

a. 1800 - Donor's Tax Return
b. 1801 - Estate Tax Return
c. 2000-OT - Documentary Stamp Tax Declaration/Return (One-Time Transactions)

The BIR Form Nos. 1800 and 1801 shall be filed within thirty (30) days after the gift (donation) is made and one (1) year from the decedent's death, respectively. BIR Form No. 2000-OT shall be filed, and the tax paid within five (5) days after the close of the month when the taxable document was made, signed, issued, accepted or transferred.

RMC No. 34-2021, March 3, 2021

This prescribes the use of the revised BIR Form No. 2200-A [Excise Tax Return for Alcohol Products] January 2020 (ENCS) and BIR Form No. 2200-T [Excise Tax Return for Tobacco, Heated Tobacco and Vapor Products] January 2020 (ENCS)

The revised manual returns are already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Excise Tax Return Section. However, the forms are not yet available in the eFPS and eBIRForms. Thus, eFPS/eBIRForms filers shall continue to use the BIR Form No. 2200-A and 2200-T in eFPS and in Offline eBIRForms Package v7.8 in filing and paying the Excise Tax due until said return becomes available in the eFPS and in the Offline eBIRForms Package, which shall be announced in a separate revenue issuance.

Manual filers shall download and print the PDF version of the form, and completely fill out the applicable fields; otherwise, penalties under Sec. 250 of the Tax Code, as amended, shall be imposed.

RMC No. 35-2021, March 3, 2021

This prescribes the use of the enhanced BIR Form No. 1601-FQ September 2020 (ENCS)

The enhanced BIR Form No. 1601-FQ [Quarterly Remittance Return of Final Income Taxes Withheld] September 2020 (ENCS) was revised due to inclusion of additional countries having tax treaties with the Philippines, namely: Mexico, Qatar, Sri Lanka and Turkey.

The revised manual return is already available in the BIR website (www.bir.gov.ph) under the BIR Forms-Payment/Remittance Forms Section. However, the newly-revised form is not yet available in eFPS and eBIRForms. Thus, eFPS filers shall use the enhanced BIR Form No. 1601-FQ January 2018 (ENCS), which contained the additional countries mentioned above, while eBIRForms filers shall use the manual return in filing and remitting the taxes due thereon, if any, in cases when taxpayer shall avail the tax treaty/ies with the newly-added country/ies.

Manual filers shall download and print the PDF version of the form, and completely fill out the applicable fields; otherwise, penalties under Sec. 250 of the Tax Code, as amended, shall be imposed.

RMC No. 36-2021, March 5, 2021

Prescribes changes and guidelines on the shift from final to a creditable system on the value-added tax (VAT) withheld on sales to government or any of its political subdivisions, instrumentalities or agencies, including Government-Owned or-Controlled Corporations (GOCCs)

The following changes/adjustments shall be effected to the following forms, in relation to VAT withholding, until a new version of the forms have been developed and prescribed for use:

BIR Form No.	Line/Schedule Affected	Description	Remarks
2550M (v. February 2007)	20B	Input tax on sale to Govt. closed to expense (Sch. 4)	Not to be filled out/To be deactivated from the Electronic Payment and Filing System (eFPS)
	23C	VAT withheld on Sales to Gov't (Sch. 8)	Where the creditable VAT withheld will be reflected
	Schedule 4	Input Tax Attributable to Sale to Government	Not to be filled out/To be deactivated from the eFPS
	Schedule 8	VAT withheld on Sales to Government	Where the details of the creditable VAT withheld will be reflected
2550Q (v. February 2007)	23B	Input tax on sale to Govt. closed to expense (Sch. 4)	Not to be filled out/To be deactivated from the eFPS
	26D	VAT withheld on Sales to Gov't (Sch. 8)	Where the creditable VAT withheld will be reflected
	Schedule 4	Input Tax Attributable to Sale to Government	Not to be filled out/To be deactivated from the eFPS
	Schedule 8	VAT withheld on Sales to Government	Where the details of the creditable VAT withheld will be reflected

RMC No. 39-2021, March 22, 2021

Extension of the Deadline for the Filing of Applications for VAT Refund Claims and Suspension of the 90-Day Processing at the VAT Credit Audit Division.

Due to the temporary closure of the VAT Credit Audit Division (VCAD) until March 28, 2021, in compliance with the existing health protocols for the mitigation of COVID-19 pandemic, the filing of VAT Refund Applications, where the two (2)-year period within which to file the claim that falls on March 31, 2021, shall be extended until **April 12, 2021**.

Due to the same reason, the 90-day period of processing of all VAT refund claims pending before the VCAD during the temporary closure is also suspended pursuant to Section 5(3) of RR No. 27-2020.

RMC No. 39-2021, March 22, 2021
Extension of the Deadline for the Filing of Applications for VAT Refund Claims and Suspension of the 90-Day Processing at the VAT Credit Audit Division.

Due to the temporary closure of the VAT Credit Audit Division (VCAD) until March 28, 2021, in compliance with the existing health protocols for the mitigation of COVID-19 pandemic, the filing of VAT Refund Applications, where the two (2)-year period within which to file the claim that falls on March 31, 2021, shall be extended until **April 12, 2021**.

Due to the same reason, the 90-day period of processing of all VAT refund claims pending before the VCAD during the temporary closure is also suspended pursuant to Section 5(3) of RR No. 27-2020.

RMC No. 40-2021, March 25, 2021
Publishes a copy of the Full Text of COA-DBM Joint Circular No. 1, Series of 2021, dated March 8, 2021

The Circular publishes a copy of the full text of of COA-DBM Joint Circular No. 1, Series of 2021, dated March 8, 2021 entitled, "GUIDELINES IMPLEMENTING EXECUTIVE ORDER (E.O) NO. 87 DIRECTING ALL ACCOUNTS PAYABLE WHICH REMAIN OUTSTANDING FOR TWO YEARS OR MORE IN THE BOOKS OF NATIONAL GOVERNMENT AGENCIES BE REVERTED TO THE ACCUMULATED SURPLUS OR DEFICIT OF THE GENERAL FUND OF THE NATIONAL GOVERNMENT".

The Joint Circular provides that all National Government Agencies/Government Owned/or Controlled Corporations shall revert all accounts payable for FY 2017 and prior years thereto in the Accumulated Surplus/(Deficit) on or before the end of 2021.

All accounts payable that were reverted to the Accumulated Surplus/(Deficit), and those which have been validated by competent authorities by final and executory decisions to be legitimate claims, shall be charged against either: (1) the Contingent Fund for the payment of validated claims and determined by DBM as urgent; and/or (2) the Specific Budget of the agency concerned under succeeding annual General Appropriations Act.

RMC No. 41-2021, March 29, 2021
Filing of Returns as well as Payment of Taxes Due thereon Falling within the Period March 22, 2021 to April 30, 2021.

The Circular is issued to provide relief to taxpayers, in relation to the current surge of COVID-19 cases that is affecting the entire country which has prompted establishments to operate at half their manpower capacity.

The filing of returns as well as payment of taxes due thereon, falling within the period March 22, 2021 to April 30, 2021 may be made anywhere, even outside the jurisdiction of the Revenue District Office where they are registered.

Taxpayers who are mandated to use the eFPS and eBIRForms System are encouraged to electronically file their returns through the eBIR Forms Facility and pay the corresponding taxes due thereon through any ePayment channels.

RMO No. 13-2021, March 31, 2021
Further Amendment to RMO No. 15-2016 Amending Certain Provisions of RMO No. 30-2001

This Circular further amends RMO No. 15-2016 by including additional BIR offices responsible for bank accreditation.

The Bank Accreditation Committee (BAC) now includes the Assistant Commissioners of Internal Revenue (ACIRs) from the Legal Service (LS), and Enforcement and Advocacy Service (EAS).

Thus, the BAC now composed of the following:
(1) ACIR Collection Services as Chairman;
(2) the ACIRs, LS and EAS;
(3) the HREA's, Information Systems Development and Operations Service (ISDOS), Information System Project Management Service (ISPMS);
(4) Head, Revenue Data Center (RDC) – Luzon 2;
(5) Representatives from the Office of the Commissioner;
(6) Office of the Deputy Commissioner of Internal Revenue – Operations Group (ODCIR – OG).

RMO No. 14-2021, March 31, 2021
Streamlining of the Procedures and Documents for the Availment of Tax Treaty Benefits.

The Circular aims to settle at once all issues related to the availment of treaty benefits and to deliver efficient service to the taxpayers in compliance with the Ease of Doing Business Act.

A. Depending on the tax rate applied, the following shall be filed

Tax Rate Applied	Responsible Taxpayer	Shall File	When to File
Treaty rates	Withholding agent	Request for Confirmation	Any time after the payment of withholding tax but shall in no case be later than the last day of the fourth of the month following the close of each taxable year
Regular rates	Non-resident	Tax Treaty Relief Applications	At any time after receipt of income

B. Grant or Denial by the BIR

BIR Finding	Document Issued	Signatory	Effect
Withholding tax rate applied is **lower** than the rate that should have been applied	BIR Ruling denying the Request for Confirmation or TTRA	Commissioner of Internal Revenue or his duly authorized representative	Withholding agent shall pay the deficiency tax plus penalties
Nonresident taxpayer is **not entitled** to treaty benefits			
Withholding tax rate applied is **proper or higher** than the rate that should have been applied	Certificate confirming the nonresident income recipient's entitlement to treaty benefits	Assistant Commissioner for Legal Services	Taxpayer may apply for a refund of excess withholding tax

C. Applications and Processing

General Rule: One TTRA/Request for Confirmation for each transaction.
Exception: Annual updating for long-term contracts (i.e. those effective for more than one year) until termination of the contract

D. Appeals

All adverse rulings are appealable to the Department of Finance within thirty (30) days from receipt.

E. Evaluation of Pending TTRAs for Income Earned in Prior Years

Pending TTRAs for income earned in 2020 and prior years are given three (3) months from receipt of Final Notice to Submit Additional Documents or from effectivity of RMO No. 14-2021, whichever is later, to submit lacking documents. Taxpayers who were issued a Notice of Archiving will no longer receive a Final Notice.

Failure to submit the requested documents would result in automatic denial of the TTRA.

F. Filing a Claim for Refund

A non-resident taxpayer may file for a claim for refund representing the difference between the withholding tax actually paid and the amount of tax that should have been paid under the treaty. For this purpose, a duly accomplished BIR FORM No. 1913 shall be filed together with the letter-request. The claim for refund may be filed independently of, or simultaneously with, the TTRA.

All claims for refund shall be filed within the two (2)-year prescriptive period under Section 229 of the 1997 NIRC, as amended.

G. Transitory Provisions

All pending TTRAs shall be processed following the manner laid down in RMO No. 14-2021. For dividends, interest, and royalties, the submission of Certification of Residence for Treaty Relief (CORTT) Form shall be discontinued. Nevertheless, previously submitted CORTT Forms shall still be forwarded to the concerned RDOs for compliance check.

SEC ISSUANCES

HIGHLIGHTS

SEC Notice Dated March 16, 2021

This provides an alternative mode of complying with the existing requirements in the conduct of 2021 Annual Stockholders' Meeting (ASM) for Publicly Listed Companies

Concerned companies can notify their stockholders about the ASM via an alternative mode by causing the publication of the Notice of Meeting informing the shareholders of the following:

- Date, time and place of meeting and other required information
- The availability of an electronic copy of the Information Statement and Management Report and SEC Form 17A and other pertinent documents in the following locations:
  - Company's website
  - PSE Edge

The Notice of the Meeting shall be published in the business section of two (2) newspaper of general circulation, in print and online format, for two (2) consecutive days, provided that, the last publication of the Notice of Meeting (print and on-line) shall be made no later than twenty-one (21) days prior to the scheduled ASM.

SEC Notice Dated March 25, 2021

This provides for the extension of deadline for submission of all mandatory disclosures under Sections 6 and 7 of SEC MC No. 01, Series of 2021

The SEC has extended the deadline for submission of all mandatory disclosures under Sections 6 and 7 of SEC MC No. 01, Series of 2021 or "The Beneficial Ownership Transparency Guidelines" to May 31, 2021.

SEC Notice Dated March 30, 2021

This clarifies the non-extension of grace period for the payment of loans and/or interest falling due within the Enhanced Community Quarantine (ECQ) period

The SEC clarifies that no mandatory grace period was granted for the payment of loans and/or interest falling due within the ECQ period from March 29 to April 4, 2021.

The provision on the 30-day grace period for loan payments under Section [8] General Provisions, paragraph 2 of the Omnibus Guidelines on the Implementation of Community Quarantine in the Philippines with Amendments as of March 28, 2021 pertains to the mandatory grace period mandated under Section 4 (aa) of Republic Act No. 11469, or the Bayanihan to Heal As One Act. FCs, LCs and MF-NGOs implemented said mandatory grace period from March 17, 2020 to May 31, 2020.

SEC Notice Dated March 31, 2021

This provides for the extension of deadline for the submission of the General Information Sheet (GIS) for 2021

The SEC extends the deadline for the submission of the GIS and reiterates the interim filing procedures, as follows:

Coverage	Adjusted Deadline
All corporations, whether stock or non-stock: a. Stock corporations that were able to hold their Annual Stockholders' Meeting (ASM) prior and/or during the OST enrolment period which started last March 15, 2021 and will end until December 15, 2021; and b. Those corporations that were not able to hold any ASM in 2020 who have until January 30, 2021 to submit their GIS.	Within ninety (90) calendar days after the ASM or Annual Members' Meeting of the Directors, Trustees and Officers of the corporation, as fixed in the by-laws or as determined by the Board of Directors/Trustees

By 2022, all corporations, whether stock or non-stock, shall be required to enrol and submit their reports through the OST.

SEC MC No. 03 s. 2021

This provides for the guidelines on the filing Annual Financial Statements (AFS), General Information Sheet (GIS) and Other Covered Reports

The SEC promulgates the following guidelines on the 2021 filing of AFS, GIS, Sworn Statement for Foundation (SSF), General Form for Financial Statements (GFFS), and Special Form for Financial Statements (SFFS), and the use of the Online Submission Tool (OST) in filing the said reports, as follows:

- The submission of annual reports shall be done online using the OST.
- The SEC shall no longer accept hard copies of reports. No submission through email, mail, courier and chute box shall be allowed and/or accepted.
- The submission of GFFS and SFFS in diskette or compact disc is no longer required.
- All corporations registered with SEC must enrol in the OST in order to access and submit reports through the OST, except as otherwise provided in this Memorandum Circular and other issuances of the SEC.
- The OST will prompt the filer whether the report to be filed should be in Portable Document Format (PDF), Microsoft Excel and other formats.
- In case filers cannot enrol and submit reports through the OST, kiosks shall be provided in SEC offices and other areas, as may be designated by the Commission for technical assistance on the use of the OST.
- The SEC Main Office, all SEC Extension Offices (EOs), and Satellite Offices may accept reports over the counter provided that filers present the Notice from OST that problems have been encountered during the process of enrolment and/or submission.
- Scanned copies of the printed or hard copies of the Reports with wet signature and proper notarization other than AFS, GIS, SSF, GFFS,SFFS like IHFS, PHFS, BDFS, LCFS, FCFS, LCIF, and FCIF, ANO and ANHAM, shall be filed in PDF through email at ictdsubmission@sec.gov.ph.
- For those Reports that require the payment of filing fees, these still need to be filed and sent via email with the SEC's respective Operating Departments.
- All corporations that will file their reports through the OST but whose applications for enrolment are still for validation by the CRMD, shall receive a notification during their registration and through their registered email on how to proceed with their application.
- The OST shall be open twenty-four (24) hours. However, all submissions shall only be accepted from Mondays to Fridays. Submissions made outside of the OST's operating hours shall be considered filed on the next working day.
- The reckoning date of receipt of reports is the date the report was initially submitted to the OST, if the filed report is compliant with the existing requirements.

A report which was reverted or rejected is considered not filed or not received. A notification will be sent to the filer, stating the reason for the report's rejection in the remarks box.

SEC MC No. 04 s. 2021
This amends the MC No. 16, s. of 2018 and MC no. 29, s. of 2020

The significant amendments are as follows:

Section 1.2. of the 2018 AML/CFT Guidelines is amended to read as:

> "Section 1.2 Covered Persons – The term "covered persons shall refer to persons regulated by the Commission under the SRC, The Investment Houses Law, the Investment Company Act, the Financing Company Act of 1998, the Lending Company Regulation Act of 2007, other laws and regulations implemented by the Commission, and the AMLA, as amended.
> The covered persons are as follows:
> 1.2.1 x x x x
> 1.2.2 x x x x
> 1.2.3 x x x x
> 1.2.4 Financing Companies and Lending Companies"

All financing companies and lending companies subject to the supervision of the Commission are required to comply with Section 2, Rule 4 of the 2018 IRR of the AMLA and to register with the AMLC's online reporting system pursuant to the AMLC Registration and Reporting Guidelines.

Financing companies and lending companies not yet registered with the AMLC are given a period of two (2) months from the effective date of this Circular to submit proof of such registration to the Anti-Money Laundering Division of the Enforcement and Investor Protection Department (AMLD-EIPD) of the Commission.

Section 5 of the 2020 Guidelines on the Submission and Monitoring of the Anti-Money Laundering and Terrorist Financing Prevention Program (MC No 29, Series of 2020) is hereby deleted.

BSP ISSUANCES

HIGHLIGHTS

BSP Circular No. 1111, March 03, 2021

This amends the Rules and Regulations on the Mandatory Credit Allocation for Agriculture and Agrarian Reform Credit

The Monetary Board approved the revised rules and regulations governing the mandatory credit allocation for agriculture and agrarian reform credit to implement the provisions of Republic Act No. 10000, otherwise known as "The Agri-Agra Reform Credit Act of 2009."

As such, Section 331 of the Manual of Regulations for Banks (MORB) is amended to implement the provisions of Section 7 of the lmplementing Rules and Regulations of R.A. No. 10000. Pursuant thereto, the following guidelines are as follows:

- Qualified borrowers for agriculture, fisheries and agrarian reform credit shall refer to farmers, fisherfolk, ARBs and/or ARB households, settlers, agricultural lessees.
- Banks shall set aside at least twenty-five percent (25%) of their total loanable funds for agriculture, fisheries and agrarian reform credit in general, of which at least ten percent (10%) of the total loanable funds shall be made available for ARBs and/or ARB households or ARCs.
- Excess compliance in the ten percent (10%) agrarian reform credit may be used to offset a deficiency, if any, in the fifteen percent (15%) other agricultural and fisheries credit, in general, but not vice versa.
- Total loanable funds as computed under this section shall be made available by bank for agriculture, fisheries and agrarian reform credit.
- Banks may grant a syndicated type of loan for agrarian reform credit/ agricultural and fisheries credit in general, either between or among themselves.

BSP CL-2021-023, March 18, 2021

This disseminates the 2021 Sanctions Guidelines issued by the Anti-Money Laundering Council (AMLC)

The 2021 Sanction Guidelines incorporate the amendment brought about by the enactment of RA 11479 or the Anti-Terrorism Act of 2020 and RA 11521 or An Act Further Strengthening the Anti-Money Laundering Law, amending for the purpose RA 9160, otherwise known as the Anti-Money Laundering Act of 2001, as amended.

This Guidelines cover targeted financial sanctions (TFS) related to terrorism, terrorism financing and proliferation financing (PF), including remedies as well as relevant links to the United Nations Security Council (UNSC) Consolidated List and Committee Guidelines on exemptions from asset freeze and de-listing. Additional chapters were included on request for de-listing from Anti-Terrorism Council designations and TFS related to PF.

IC ISSUANCES

HIGHLIGHTS

IC Circular Letter-2021-013, March 3, 2021
This prescribes additional quarterly reports for Pre-Need Companies

Pre-Need Companies are required to submit additional interim reports as follows:

1. Breakdown of Pre-Need Reserves and Benefit Obligations/Payables per Line of Business; and
2. Breakdown of Investments in Trust Funds per Line of Business.

Said reports shall be submitted both in PDF and Excel formats through email address *pneed@insurance.gov.ph* on or before the deadlines stated in CL No.2015-61 dated December 15, 2015.

IC Circular Letter-2021-018, March 16, 2021
This provides the protocol for Pre-Need Companies in financial distress which are at the same time undergoing rehabilitation or other proceedings under Republic Act No. 10112, Otherwise Known as the "Financial Rehabilitation and Insolvency Act (FRIA) of 2010"

The following protocol shall be observed for pre-need companies in financial distress which have been undergoing rehabilitation or other proceedings:

- Whichever entity acquires jurisdiction ahead of the other entity shall acquire said jurisdiction to the exclusion of the other.
- If the Commission had already acquired prior jurisdiction over a company, the Commission shall appoint a conservator pursuant to the charter regulating the entity.
- If a Rehabilitation Court had already acquired prior jurisdiction over a company, such jurisdiction shall remain with the court until the termination of the case.
- The acquisition of jurisdiction by the court does not preclude the Commission from exercising its regulatory powers over the regulated entity. Henceforth, the Commission shall communicate its regulatory directives to the proper corporate officers, *i.e.*, its company President, etc. to effect its directives and requirements.

IC Circular Letter-2021-022, March 29, 2021

This provides guidelines on the operations of Health Maintenance Organizations and Health Insurance Providers under the Enhanced Community Quarantine (ECQ)

The guidelines are as follows:

- It applies to all health insurance providers and HMOs doing business in the Philippines during the period of ECQ as provided under IATF Resolution No. 106-A, series of 2021.
- HMOs and health insurance providers seeking to maintain on-site operations in areas under ECQ, as may be necessary and desirable to ensure access to necessary medical treatments and health care services of members or policyholder, shall not be required to secure a certification to that effect from the IC.
- HMOs and health insurance providers seeking to maintain on-site operations in areas under ECQ are hereby directed to issue Certificate(s) of Employment in favor of employees who will form part of their on-site workforce.
- Regulated entities are required to direct their concerned employees to bring company IDs, valid IDs, and such other documents or identifications that will facilitate easy determination of compliance with relevant guidelines pertaining to the implementation of the ECQ.

IC LO-2021-05, March 2, 2021

A performance security/bond that states that it is valid "until issuance of the final acceptance of the project" or "co-terminus with the final acceptance" remains valid until such acceptance, even if such period extends beyond one (1) year, provided that the applicable premium is duly paid.

Section 39, Rule XI of the 2016 Revised lmplementing Rules and Regulations of R.A. 9184 ("the IRR") requires the Performance Security or Performance Bond to remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance. The performance security may be released by the Procuring Entity after the issuance of the Certificate of Final Acceptance, subject to the following conditions:

a. Procuring Entity has no claims filed against the contract awardee or the surety company;
b. It has no claims for labor and materials filed against the contractor; and
c. Other terms of the contract.

While non-insurance products, including bonds, are typically issued for a period of one (1) year, it must be noted that the lnsurance Code, as amended, recognizes the validity of bonds beyond one (1) year. The performance security contemplated in Section 39.4 of the IRR, which "shall remain valid until issuance by the Procuring Entity of the Certificate of Final Acceptance" is in the nature of a continuing bond. Applying Section 179 of the lnsurance Code, as amended, such bond may be extended beyond a period of one (1) year or until the issuance of the final acceptance of the procuring entity, and shall remain valid during such period provided that the applicable premium is duly paid.

NEW GUIDELINES IN THE AVAILMENT OF TAX TREATY BENEFITS

By

Fulvio D. Dawilan

The Bureau of Internal Revenue issued Revenue Memorandum Order No. 14-2021 (RMO 14-21) purportedly to streamline the procedures and documents in the availment of tax treaty benefits. This new RMO provides new guidelines and procedures in the availment of tax treaty reliefs, effectively repealing, superseding, and modifying the prior guidelines and procedures provided in RMO No. 30-2002, RMO No. 72-2010 (Guidelines on the Processing of Tax Treaty Relief Applications Pursuant to Existing Philippine Tax Treaties) and RMO No. 8-2017 (Procedure for Claiming Tax Treaty Benefits for Dividend, Interest and Royalty Income).

One significant change introduced by the new RMO is the discontinuance of the submission of Certificate of Residence for Treaty Relief (CORTT) Form to avail of the preferential rates for dividends, interest and royalties under the applicable tax treaty is discontinued. These types of income payments, together with other types of income paid to non-residents, which are entitled to tax exemptions or reduced tax rates based on applicable tax treaties, are now required to comply with this new RMO.

NEW GUIDELINES IN THE AVAILMENT OF TAX TREATY BENEFITS

By

Fulvio D. Dawilan

The new guidelines imposes on the nonresident taxpayer deriving income from sources within the Philippines and who intends to apply the reduced rates or tax exemptions available under tax treaties to accomplish the prescribed Application Form for Treaty Purposes (BIR Form 1901) and secure Tax Residency Certificate (TRC) from the tax authority of its country of residence. These documents must have to be submitted to its income payor or withholding agent prior to the payment of income for the first time. In case of failure of the non-resident to provide the said documents, the income payor may disregard the treaty rate and apply the regular rates prescribed under the domestic tax law.

Apparently, the submission of the accomplished BIR Form 1901 and TRC to the withholding agent does not oblige the latter to apply the tax rates based on the tax treaty. The withholding agent may use as the income tax/final withholding tax rate provided in the treaty or still apply the rate based on the Tax Code.

The rate used by the income payor will determine the next step for the availment of the tax exemption or reduced treaty rate. In case the treaty rate is applied, the withholding agent shall file with the International Tax Affairs Division (ITAD) of the BIR a request for confirmation on the propriety of the withholding tax rates applied on the income payment made. This shall be filed by the withholding agent any time after the payment of withholding tax but shall in no case be later than the last day of the fourth month following the close of each taxable year. On the other hand, if the regular rate is imposed by the withholding agent, it shall be the responsibility of the nonresident recipient of the income to file an application for tax treaty relief (TTRA) with ITAD. This may be done any time after the receipt of income. And whether a request for confirmation is filed by the withholding agent or a TTRA is filed by the income recipient, the filing shall be supported by documents prescribed by the new RMO.

Incidentally, in addition to the modification of the procedures, new documentary requirements had also been added and some of the previously required documents were modified. Let me reserve my comment on these modified procedures and documentary requirements for the future articles in this column. In the meantime, let's review whether there should even be a need for confirmation or application for TTRA in the first place.

NEW GUIDELINES IN THE AVAILMENT OF TAX TREATY BENEFITS

By

Fulvio D. Dawilan

As stated in the background for the issuance of this new RMO, the availment of treaty benefits has always been an issue, and added that it had been subjected to varying interpretations after the pronouncement made by the Supreme Court in the Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue (G.R. No. 188550, August 19, 2013 - the "Deutsche Case"). Indeed, the requirement for the filing of a TTRA with the tax authority before one can apply the exemptions or preferential tax rates based on tax treaties had always been an issue. I, however, don't agree that the Deutsche Case resulted in more varying interpretations. It had in fact settled the issue.

It is true that the case did not categorically state that a tax treaty relief application is not required for the enjoyment of tax treaty benefits. It did, however, rule against the requirement at that time for the filing of an application before the transaction. Hence, a prior application is not a requisite for the enjoyment of treaty benefits.

As to whether an application may be required while the transaction is ongoing or after its completion, there was no specific pronouncement to that effect. The facts of that case showed that there was a subsequent application by the taxpayer. Yet there was no declaration by the Court that the subsequent application was needed for the entitlement to the treaty benefit. Had there been a statement to that effect, then rightfully, the implication would be that an application is required, but which could be done at any stage of the transaction.

In my view, the more important message in the Deutsche Case is the declaration that the outright denial of tax treaty relief is not in harmony with the objectives of the contracting state to ensure that the benefit granted under the treaties is enjoyed by person entitled to it. It is the requirement itself which the Court ruled as not necessary for one to enjoy the benefit as the treaties do not provide such requirement. This must be read in relation to the Court's statement that the tax authority must not impose additional requirements that would negate the availment of the reliefs provided for under international agreements. Certainly, any failure to file TTRA or a confirmation of an availment already made, before, during, or after the transaction does not violate a requirement in tax treaties.

And to the view that there had been varying interpretations after the Deutsche Case, perhaps referral to the Courts' subsequent applications of the case is noteworthy. Rulings favored the taxpayers,

emphasizing on the fact that "it is an imposition that is not found at all in the applicable tax treaties". Is the subsequent confirmation or application or subsequent application for TTRA found in the treaties?

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For inquiries on the article, you may call or email

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